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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Applications of WorldCom, Inc. and)
MCI Communications Corporation) CC Docket No. 97-211
for Transfer of Control of)
MCI Communications Corporation to)
WorldCom, Inc.)

To: The Commission

FURTHER COMMENTS OF RAINBOW/PUSH COALITION
ON WORLDCOM/MCI'S JOINT REPLY TO PETITIONS TO DENY
AND COMMENTS

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The Rainbow/PUSH Coalition ("Rainbow/PUSH") respectfully submits its Further Comments on the Joint Reply filed by WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI") in the above-captioned proceeding.¹ Rainbow/PUSH renews its request that the Commission deny the Joint Applications of WorldCom and MCI or, in the alternative, designate their applications for evidentiary hearings.

SUMMARY

While the Applicants have had two opportunities in this proceeding to produce evidence that details the effects of their proposed merger, WorldCom and MCI have nevertheless engaged in a \$40 billion shell game. They have ignored the applicability of the Commission's Bell Atlantic/NYNEX Order² as the framework for analysis. They have produced volumes filled with rhetorical flourishes, but supplied only crumbs of evidence to support them. They have dodged their burden of proof, shrouded the truth and

¹ Joint Reply of WorldCom, Inc. and MCI Communications Corporations to Petitions to Deny and Comments, CC Docket 97-211 (filed Jan. 26, 1998) ("Joint Reply").

² See Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent To Transfer Control of NYNEX Corporation and Its Subsidiaries, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997) ("Bell Atlantic/NYNEX Order").

forced the petitioners to evaluate the largest proposed merger in world history from the depths of an information vacuum that is of the Applicants' own creation.

These tactics, however, are of no moment. As the Applicants themselves have noted: "...[A] page of history is worth a volume of logic."³

In this case, the history of WorldCom and MCI includes evidence of redlining in Atlanta - a city where barely a fraction of the city's nearly 700,000 African American residents are served by networks targeted to wealthy suburban and big business customers. It is a history that casts doubt on their claims that they provide local service on a non-discriminatory basis and raises the specter of a pattern of racial and economic gerrymandering by the combined company if the proposed merger is approved. Because WorldCom and MCI have generally refused to comply with the Bell Atlantic/NYNEX Order's most basic requirement - that applicants supply data to support their public interest claims - the true depth and scope of these and other potential problems can be neither ascertained nor addressed. Consequently, the applications of WorldCom and MCI must be denied

³ Joint Reply at 54, quoting New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921) (J. Holmes).

or, at the very least, designated for hearings where the disclosure of facts may be compelled and their veracity examined.

I. THE EVIDENCE BELIES WORLDCOM AND MCI DENIALS OF REDLINING AND CREAMSKIMMING IN THE BUILDOUT OF THEIR LOCAL NETWORKS

WorldCom and MCI do not dispute that issues of diversity may be included by the Commission under the rubric of the public interest analysis associated with the Bell Atlantic/NYNEX standard. Nor have they denied that race-related issues, including discrimination, redlining and cream-skimming, are a necessary for a meaningful social equity review of the competitive impact of a major merger. Instead, the Applicants simply allude to "numerous efforts to assist low-income, minority, and immigrant communities" and the petitioners' failure to provide "allegations of past impropriety"⁴ to deflect questions of discrimination and the potential for its perpetuation by the companies if the proposed merger is approved. Meanwhile, evidence that demonstrates redlining by the companies in their Atlanta networks reveals these denials as just smoke and mirrors.

⁴ Joint Reply at 91-92.

A. APPLICANTS WRONGLY ATTEMPT TO SHIFT THE BURDEN OF PROOF TO PETITIONERS, FAIL TO ADDRESS CRITICAL ELEMENTS OF THE REDLINING ISSUE AND PRESENT NO EVIDENCE TO SUPPORT THEIR CLAIMS

Under the Bell Atlantic/NYNEX standard, the "burden is on the applicants to demonstrate that the transaction will be in the public interest, convenience and necessity."⁵ In this regard, the Applicants have claimed their primary public interest benefit is that the proposed merger will bring "meaningful competition" to the local exchange market. Yet, the Applicants offer nothing to support either these claims or a conclusion that their merger would serve the interests of all members of the public - including minority and low-income residents and small businesses.

Instead, the Applicants have said "prove it" when confronted with petitioners' redlining concerns. WorldCom and MCI respond to these issues by saying that "it is important to note that no allegations of past impropriety have been made."⁶ The companies then suggest that the Commission should set these concerns aside because "there is no record evidence that either MCI or WorldCom

⁵ Bell Atlantic/NYNEX Order at 20009, ¶37.

⁶ Joint Reply at 92.

has ever engaged or would engage in objectionable behavior."⁷

Finally, WorldCom's counsel offered the most succinct statement of the companies' party line:

I think their arguments are misplaced. I think it's telling that these concerns are hypothetical and speculative. Nobody has pointed to a single example of where WorldCom or MCI have sought to exclude certain customer bases, nor would it make any economic sense for them to do so.⁸

Therefore, while WorldCom and MCI refuse to provide evidence to make possible a meaningful analysis of their local networks, they point to the absence of analysis as justification to ignore the potential for redlining. Regardless, as will be shown below, evidence acquired by Rainbow/PUSH points to where WorldCom and MCI have "sought to exclude certain customer bases" in the buildout of their Atlanta networks and may suggest a pattern of discrimination by WorldCom and MCI.

The Bell Atlantic/NYNEX Order requires facts, nothing less. Considering the only recent evidence of MCI and WorldCom's "commitment" to urban residents - a decision to locate new

⁷ Id at 92-93.

⁸ Paul Farhi and Mike Mills, "Foes See Lawyer's Civil Rights Agenda in Attack on MCI," Washington Post, Feb. 11, 1998, at A1.

headquarters and computer facilities away from the central cities of Washington, D.C., and Jackson, Miss. - it is imperative that they be required to prove what underlies their claims of "meaningful competition" in the local market.

B. EVIDENCE SUGGESTS REDLINING IN ATLANTA, CASTS DOUBT ON APPLICANTS' PUBLIC INTEREST CLAIMS AND RAISES THE SPECTER OF DISCRIMINATORY CONDUCT AFTER THE PROPOSED MERGER

Notwithstanding the Applicants refusal to supply data regarding their local networks, there is evidence to suggest that WorldCom and MCI engaged in redlining during the buildout of their competitive fiber-line networks in Atlanta. (See Exhibit 1). Considering the presence of such evidence, despite denials by WorldCom and MCI and their patent refusal to divulge this information, Rainbow/PUSH suggests that a full airing of the data would lead to the disclosure of a pattern of discrimination.

Twenty-six percent of Atlanta's nearly 2.8 million residents are African-Americans,⁹ the vast majority of whom live in an approximately 250-square mile region south and west of the downtown area. Along with the more than 500,000 residents who live in Atlanta's African-American neighborhoods, there are more

⁹ United States Census Data, 1996.

than 21,000 African-American businesses.¹⁰ As indicated by the attached map, however, WorldCom and MCI's local networks in Atlanta stretch north and east of downtown - creating a pair of overlapping 40-mile loops that bring wide ranging service to downtown businesses and wealthy suburbs, but which skirt the fringes of the African-American community. While the networks also serve dozens of buildings downtown, in the areas where African-American businesses are concentrated the WorldCom and MCI local telephone networks are virtually nonexistent.

This data suggests that Atlanta is an example of where WorldCom or MCI have sought to exclude certain customer bases based on racial or economic criteria. And while Rainbow/PUSH does not have the resources necessary to fund research on WorldCom and MCI networks nationwide, we expect that if the Applicants were compelled to release this data Atlanta would be merely one example in a patter of discrimination. While this information is difficult for Rainbow/PUSH to obtain, it is precisely the kind of data the Applicants readily possess, yet refuse to divulge.

¹⁰

See Exhibit 1.

As a threshold matter, the information collected in Atlanta signals the need for hearings to resolve the discrepancy between these facts and WorldCom's and MCI's public interest claims.

II. THE APPLICANTS HAVE GENERALLY FAILED TO MEET THE BURDEN OF PROOF PLACED ON THEM BY THE BELL ATLANTIC/NYNEX DECISION

The standards, procedures and requirements for reviewing mergers that the Commission established in the Bell Atlantic/NYNEX Order, are, unequivocally, the benchmark against which the applications of WorldCom and MCI must be tested.¹¹ Consequently, the burden is on the applicants to demonstrate that the transaction will be in the public interest.¹² Nevertheless, and despite several opportunities to comply, WorldCom and MCI have yet to meet this burden. They do not adequately explain

¹¹ The Common Carrier Bureau Chief requested in his Order that parties to this pleading cycle address in their comments "the merger framework the Commission articulated in the Bell Atlantic/NYNEX and BT/MCI merger proceedings to the proposed merger at issue in this proceeding." Specifically, the Bureau requested an identification of and a "discussion of the potential competitive effects and efficiencies resulting from the merger and other possible effects that may be relevant to the Commission's public interest assessment." Applications of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc., Order, CC Docket No. 97-211, at 2-3, ¶4 (rel. Feb. 27, 1998).

their proposed merger's competitive effects on local residential and small business customers in urban areas. They do not substantiate the origins of their efficiency claims or explain how those efficiencies will deliver the benefits that the Applicants claim. They dismiss the petitioners' and commenters' compelling showing without addressing the potential for redlining and cream-skimming that the proposed merger will create. Consequently, their applications should be denied or, in the alternative, designated for hearing.

A. THE APPLICANTS' CLAIMS REGARDING EFFECTS ON LOCAL RESIDENTIAL AND SMALL BUSINESS HAVE NOT BEEN PROVEN

Where public interest claims are made by merger applicants, the Bell Atlantic/NYNEX standard places on them the "burden of demonstrating that the proposed transaction . . . on balance will enhance and promote, rather than eliminate or retard, competition."¹³ A core element of the public interest benefits claimed by WorldCom and MCI is that their proposed merger will bring enhanced competition in the market for local residential

(...Continued)

¹² Bell Atlantic/NYNEX Order at 20009, ¶37

¹³ Bell Atlantic/NYNEX Order at 20063, ¶157.

and small business phone service.¹⁴ But aside from assurances that the combined company "will have every incentive to expand MCI's current local service offering to attract new customers . . .,"¹⁵ there are no underlying data to show that this incentive actually exists or that a merged WorldCom-MCI will act on it.

In much the same way, WorldCom and MCI dismiss offhand concerns regarding the proposed merger's impact on residential local service to low-income and minority residents. While the Applicants assert that "WorldCom's network is predominantly situated in urban areas adjacent to low-income housing concentrations," this geography lesson is hardly testimony to prove a commitment to serve these communities. The history of urban development across teaches us that mere proximity is no guarantee that WorldCom's facilities, which are now in central business areas and bypass urban residential and small business customers, will be expanded to meet the needs of the economically disadvantaged and minority businesses.

¹⁴ Joint Reply at 19.

¹⁵ Id. at 20.

For their part, the Applicants have not provided pre- or post-merger business plans that make this commitment. Nor have they provided information on the precise location of their networks, how many of those systems overlap, their plans for buildout and how those plans will translate to increased competition. What is clear from the information supplied by the Applicants is that the merger of WorldCom and MCI will eliminate a potential competitor in the market for local service. At the same time, the companies' equivocation on their plans for residential service as a whole - at times proclaiming they are "firmly committed"¹⁶ and at others attaching amorphous conditions to those commitments¹⁷ - leaves grave doubts as to their true plans for competing for local residential customers. These public interest claims must be proven by the Applicants through reasoned analysis in the framework established by the Bell Atlantic/NYNEX Order and based on facts that are open to public scrutiny.

¹⁶ Joint Reply at 4.

¹⁷ Also casting doubt on these "commitments" are the recent remarks of MCI executives, referring to local residential resale as a "rathole" down which the company will not "throw" any more of its money. Timothy F. Price, Speech at the National Press Club, at 4 (Jan. 22, 1998).

**B. THE APPLICANTS' EFFICIENCY CLAIMS ARE OVERBROAD
AND FAIL TO MEET THE BELL ATLANTIC/NYNEX ORDER'S
REQUIREMENTS**

Under the Bell Atlantic/NYNEX Order, the Commission will consider efficiencies and synergies only if such claims are "sufficiently likely and verifiable."¹⁸ Applicants who make efficiency claims that are "vague or speculative, and cannot be verified by reasonable means"¹⁹ will fail to satisfy their burden of proof.

For their part, the Applicants promise billions of dollars of savings and efficiencies that will be gained from their merger.²⁰ Among the benefits to be derived from "core sales, general administrative cost savings," according to the Applicants, is that they will accelerate their local market entry and "make it more economically feasible for the combined company to offer local service to customers who might not be able to provide the revenues needed to support a higher cost structure."²¹

¹⁸ Bell Atlantic/NYNEX Order at 20063, ¶157.

¹⁹ Id. at 20064, ¶158.

²⁰ See Joint Reply at 11-12; WorldCom Inc. Amendment No. 3 to Form S-4 Registration Statement under the Securities Act of 1933 ("WorldCom S-4").

²¹ Joint Reply at 12.

Yet aside from the generalized, multibillion dollar estimates included in the Applicants' SEC filings, there is no quantum of evidence to support these claims. How will core sales, general and administrative savings "trickle down" to expand local market competition? Where will the savings come from? How will a combined WorldCom-MCI be able to achieve its purported capital savings and yet maintain its commitment to aggressive local buildout?

Rather than attempt to meet head on the challenges presented by the Bell Atlantic/NYNEX standard, the Applicants sidestep their burden of proof by supplanting fact with supposition. If they are to receive credit for these alleged pro-competitive benefits, they must first be required to substantiate their conclusions with verifiable data.

**III. THE APPLICANTS' FAILURE TO ADDRESS CORE ISSUES AND
PRESENT FACTS TO SUPPORT THEIR CLAIMS REQUIRES
DISMISSAL OF THE APPLICATIONS OR EVIDENTIARY HEARINGS**

The Commission's extension of the pleading cycle in this proceeding and its demand that the Applicants demonstrate the public interest benefits of their merger under the Bell Atlantic/NYNEX standard evidence a resolve to investigate this merger thoroughly. By the same token, the public should be offered a reasonable opportunity to comment on the results of

that investigation. To date, the Applicants have resisted all attempts to compel them to establish a record based on facts. Their continued failure to comply should result in either the denial of their applications or designation for hearing.

CONCLUSION

The Applicants in this proceeding have floated a giant balloon before the Commission - colorful and attractive promises on the outside, nothing but hot air on the inside. WorldCom and MCI must have their claims put to the test of public scrutiny. Once that occurs and the facts are known, it is Rainbow/PUSH's belief that the truly anticompetitive and discriminatory nature of its consequences will lead the Commission to conclude that this merger should not be consummated.

* * * * *

Respectfully submitted,

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March 13, 1998

CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 13th day of March, 1998 caused a copy of the foregoing "Further Comments of the Rainbow/PUSH Coalition" to be delivered by U.S. First Class Mail, postage prepaid, or as noted below, to the following:

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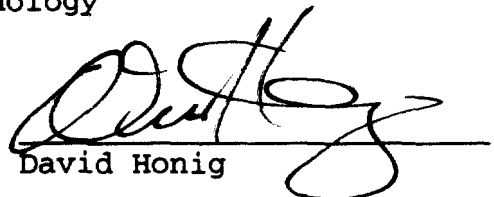
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Where WorldCom and MCI Provide Local Telephone Service in Atlanta and Where They Do Not

